



POLICE DEPARTMENT

September 9, 2013

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Luis Crespo
Tax Registry No. 903709
48 Precinct
Disciplinary Case Nos. 2010-2777 & 2011-4550

The above-named member of the Department appeared before me on April 18, 2013 and May 17, 2013, charged with the following:

Disciplinary Case No. 2010-2777

1. Said Lieutenant Luis Crespo, while assigned to the 45th Precinct, on or about July 7, 2010, while on duty, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Lieutenant failed to supervise members of service in his command responding to a radio transmission of a "male stabbed" by:

- a) Failing to ensure that a proper investigation was conducted;
- b) Failing to ensure that proper forms were prepared in a timely manner, to wit: [C]omplaint [R]eport, [A]ided [R]eport and missing/unidentified report [sic]; and
- c) Failing to make proper notifications.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

Disciplinary Case No. 2011-4550

1. Said Lieutenant Luis Crespo, assigned to the 45th Precinct, on or about July 7, 2010, while on-duty, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Lieutenant failed and neglected to remain alert.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

2. Said Lieutenant Luis Crespo, assigned as indicated above, on or about July 7, 2010, while on-duty, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Lieutenant failed to supervise members of service

assigned to his platoon by failing to ensure all personnel of the platoon were properly supervised and performing their duties in a satisfactory manner.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT

P.G. 202-13, Pages 1-3 - LIEUTENANT -- PLATOON COMMANDER

3. Said Lieutenant Luis Crespo, assigned as indicated above, on or about July 7, 2010, while on-duty, assigned as the Platoon Commander, failed to respond to a serious crime in progress as required.

P.G. 202-13, Pages 1-3 LIEUTENANT -- PLATOON COMMANDER

4. Said Lieutenant Luis Crespo, assigned as indicated above, on or about July 7, 2010, while on-duty, failed to make entries in his Department issued memobook [sic] as required.

P.G. 212-08, Page 1, Paragraph 1a (1) ACTIVITY LOGS

The Department was represented by Vivian Joo, Esq., Department Advocate's Office, and Respondent was represented by James Moschella, Esq.

In Disciplinary Case No. 2010-2777, Respondent, through his counsel, entered a plea of Not Guilty to the sole charge. In Disciplinary Case No. 2011-4550, Respondent pleaded Guilty and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2010-2777

Respondent is found Guilty of Specification No. 1.

Disciplinary Case No. 2011-4550

Respondent, having pleaded Guilty to all the charges, is found Guilty of Specification Nos. 1, 2, 3 and 4.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Sergeant Frederick Beckford, Police Officer Jessica Gill, and Police Officer Michael Morelli as witnesses. In addition, it entered into evidence the official Department interview of Police Officer Anton Rzhevskiy.

Sergeant Frederick Beckford

Beckford, a 15-year member of the Department, is currently assigned to the Internal Affairs Bureau (IAB). In July 2010, he became involved in an investigation into the alleged mishandling of an assault that had taken place the previous week in Co-op City, which is located within the confines of the 45 Precinct. The assault occurred on July 7 and resulted in an unidentified unconscious man being transported to Jacobi Hospital. Because no reports were generated, the 45 Precinct Detective Squad did not become aware of the incident until Co-op City Police Department (CCPD) personnel went to the station house on July 15, 2010.

A review of the SPRINT reports (Department's Exhibit [DX] 1) showed an anonymous 911 call for a 10-54 (aided case) at 12:54 a.m. on July 7, 2010. The caller mentioned "a male in the lobby, head swollen." The caller also mentioned that the man was experiencing heavy bleeding to the head and there was a knife lying on the floor.

In a second call, five minutes later, the job was reclassified as a "past assault for male stabbed in the head." This call, which came from Co-op City building management, indicated that the man had been removed to Jacobi Hospital and that the responding sector, identified as Police Officers Anton Rzhevskiy and Jessica Gill, gave a final disposition of

10-90Y, meaning "Unnecessary" with reports to be prepared at a later date. The SPRINT report showed that the lieutenant was requested to respond to the location. Respondent was the platoon commander at the time.

A third call regarding the same job came in at 3:50 a.m. It came from the Co-op City Public Safety Office asking that a sector respond to the location. Beckford learned that the call was placed in response to the public safety office capturing surveillance video of the incident. The video confirmed that the incident was an assault that occurred inside the building lobby. Beckford explained, "They knew it was an assault. They couldn't determine faces. They knew there was an assault taking place and somebody was getting hit and somebody actually went to the ground. But they couldn't determine, they couldn't identify anybody or any face from the video."

Beckford also learned during his investigation that the assault victim was made unconscious from blunt force trauma to the head and was robbed of his cell phone. The victim had not been stabbed. On July 15, 2010, after the Detective Squad became involved and a Missing/Unidentified Person Report was generated, the victim was identified by fingerprint as Person B. Person B was still in a coma then. Because the perpetrator had Person B's cell phone, the detectives were able to track him. Detectives arrested the perpetrator a week later for attempted murder.

Beckford determined that Rzhevskiy and Gill did not take proper action, in that they failed to prepare the necessary reports and discarded potential evidence. As for Respondent, Beckford determined that he failed to ensure that a proper investigation was conducted, in that he did not ensure that the necessary paperwork was prepared and did not secure the crime scene. Beckford explained, "[T]here was some assault. There was blood

at the scene. A knife at the scene. . . . We don't know what happened. A crime scene should have been established with the [Detective Squad] should have been notified." Also, the Evidence Collection Team should have been summoned to gather any DNA or fingerprints and the Missing Persons Squad should have been notified that there was an unidentified aided person in the hospital. Moreover, for the purpose of attempting to identify the victim, the proper procedure would have been to return to the scene of the incident that day to "find any type of witnesses . . . Maybe knock on some doors."

On cross-examination, Beckford confirmed that before any member of this Department arrived at the scene, CCPD officers had already responded and the victim had been removed to the hospital. At some point after Rzhnevskiy and Gill arrived at the scene but before Respondent's arrival, Co-op City personnel washed the area with buckets of water. Upon his arrival, Respondent picked up a knife and hat and handed these items to Rzhnevskiy and Gill. A CCPD supervisor overheard Respondent instruct Gill to take the knife and hat to the hospital and check on the condition of the aided. A CCPD officer confirmed to investigators that Rzhnevskiy and Gill removed a knife and hat from the location. There was no indication that a knife was used during the assault, and there was no evidence to contradict the belief at the scene that the knife was the personal property of the victim as opposed to it being used in the commission of a crime. Beckford did not know anything about the victim struggling with medical personnel.

The initial 911 call came from an anonymous caller reporting that he came upon a man on the ground. The caller did not report that he had witnessed an assault. Rzhnevskiy and Gill could have initiated a canvas for witnesses, though Beckford did not know if there were any witnesses to the incident. The Detective Squad would have been notified had the

paperwork been properly completed. For serious cases, responding officers can call the Detective Squad even before the paperwork is processed. This is done at the officers' discretion. Beckford agreed that it was the officers' responsibility to prepare paperwork, and that it was Rzhevskiy and Gill who failed to prepare the paperwork in this case.

Upon further questioning, Beckford testified that the CCPD is a private security service. The CCPD officers did not take any investigative steps before Rzhevskiy and Gill arrived at the scene. The fact that Co-op City personnel started to clean the area would have been a problem for anybody who wanted to preserve the crime scene. The Detective Squad is responsible for taking fingerprints.

On continued cross-examination, Beckford explained that the responding officers should have established a crime scene even though Co-op City personnel may have contaminated it. Beckford agreed that when Respondent arrived at the location, CCPD officers conveyed to him that the situation involved "an aided that was possibly intoxicated that fell down and hit his head." Although the 911 callers mentioned a knife and a stabbing, Respondent determined that a knife was not used in the struggle. As Beckford later learned, this determination turned out to be accurate.

On redirect examination, Beckford agreed that the Department needed to conduct its own investigation, regardless of the determination made by CCPD officers. When asked what the responding officers should have done with the knife, Beckford replied, "It should have stayed there. Nothing should have been moved, actually. At this point you have a crime scene. You have somebody that got removed to the hospital. Some victim of an assault of undetermined -- we don't know how it happened or what's the extent of his injuries." Beckford continued, "All we know, we have somebody that got assaulted, they

got removed to the hospital. So therefore, at least establish the crime scene and have somebody go to the hospital to check on the condition of the aided. That's what should happen."

Upon further questioning by the Court, Beckford testified that Respondent was not in a position to determine whether or not a crime had taken place. He explained:

When there's questions that need to be answered, okay, you have a body. You have a body that got injured somehow that's in the hospital. You have blood, maybe not when [Respondent] was there, but there was definitely blood when the unit responded. What should have happened is that whatever that was in place should have stayed in place until you call the lieutenant, call the lieutenant and then they call for the Detective Squad and let them make the determination whether or not it's admissible or not.

Police Officer Jessica Gill

Gill, a seven-year member of the Department, is currently assigned to the Bronx District Attorney's Office. While assigned to the 45 Precinct on July 7, 2010, she and Rzhnevskiy responded to a job in Co-op City that came over the radio as a past assault. Upon their arrival at the location, she observed CCPD officers wiping down a bloody area with buckets of water. The officers informed her that a possibly intoxicated or assaulted aided had been removed from the scene by ambulance. Gill defined aided as "a person that's sick or injured or could be a victim of a crime." Gill also observed a hat and knife at the scene. The knife was located approximately ten feet from where the incident occurred. Gill requested the response of the patrol supervisor (Respondent), and she relayed to him what the CCPD officers told her.

When he arrived, Respondent directed Gill to go to the hospital to see if she could get any information on the aided. Respondent told her that she did not have to vouch for the

knife because the knife and hat were possibly personal property of the aided and should be returned to him. Respondent did not give Gill any further instruction while at the scene.

At the hospital, Gill was unsuccessful in her attempt to learn the identity of the aided. She called Respondent to let him know about her lack of progress, and he directed her to “mark the job” and “to resume patrol.” She testified that Respondent’s instruction “to mark the job” meant to give the radio dispatcher a final disposition for the job, and to resume patrol. Gill did not recall telling Respondent that the aided appeared intoxicated. Because she did not have any direct contact with the aided, she would not have been able to assess his level of intoxication. Gill transmitted a final disposition of 10 90Y, which meant “Unnecessary. Complainant will make a report at a later date.”

Gill left the hat with a nurse at the hospital. As for the knife, Rzhevskiy told Gill that he threw it in the garbage. When asked why Rzhevskiy would throw out the knife, Gill explained, “I was told [by Respondent] that there was no need to voucher it and I didn’t think it was in connection with anything.” Respondent never instructed Gill to prepare paperwork for the incident, and no paperwork was ever filled out. The desk officer would have probably been responsible for signing off on the paperwork had it been filled out.

After 3:00 a.m. that day, Gill returned to Co-op City to view the surveillance video. On the video she saw what looked like two men fighting. When she informed Respondent what she saw on the video, he told her to tell the CCPD officers that he would “have someone look into it at a later date or later time.”

For her actions that day, Gill received Charges and Specifications for failing to take proper reports, failing to conduct a proper investigation, and failing to give the dispatcher a proper disposition. She forfeited 20 vacation days as a penalty.

On cross-examination, Gill testified that she had been a police officer for approximately four-and-a-half years at the time of the incident. She received instruction while in the Police Academy on how to handle aided cases, and she had responded to aided jobs on numerous occasions prior to July 7, 2010. When responding to one of these jobs, she would inform the patrol supervisor of the job and prepare the necessary reports. Gill conceded that she was required to prepare an Aided Report, Missing/Unidentified Person Report, and Complaint Report for the July 2010 incident, and she should have prepared these reports even if a supervisor did not specifically instruct her to do so.

When Gill arrived at the scene, nobody indicated to her that the man who was removed to the hospital had been stabbed. She reiterated that the CCPD officers informed her that the man was possibly intoxicated. She did not recall being told that the man fell or struggled with medical personnel. Respondent arrived shortly thereafter. The scene had already been washed. Gill did not know if the CCPD officers moved the knife and hat from their original locations.

Gill agreed that one of the reasons Respondent instructed her to go to the hospital was to get information to prepare the necessary reports. When she left the scene for the hospital, she brought the knife and hat with her in her Department vehicle. She spoke with hospital personnel, and nobody told her anything about the aided having been stabbed. There was no indication that there were any witnesses to the aided being assaulted. Gill was unable to identify the aided.

On redirect examination, Gill confirmed that she called Respondent from the hospital sometime between 1:00 and 3:00 a.m.

On recross-examination, Gill testified that she did not recall if Respondent instructed her to give a final disposition of 10-90Y. She did not see Rzhevskiy throw out the knife.

Police Officer Michael Morelli

Morelli, a six-year member of the Department, is currently assigned to the 45 Precinct. On July 15, 2010, Respondent directed Morelli to prepare a Complaint Report for the July 7 incident. He based the report on information received from CCPD officers. The incident was classified as an assault. Morelli was not at work on the day of the incident. At the time that he prepared the report, he did not know the name of the victim or perpetrator.

On cross-examination, Morelli confirmed that when responding to an aided case it was necessary to prepare an Aided Report. It was also necessary to prepare a Complaint Report when it was unclear whether a crime was committed and a Missing/Unidentified Person Report when the aided individual could not be identified. It would be the responding officer's responsibility to prepare these reports, and instruction from a supervisor would not be necessary.

[DX 2 is the Complaint Report prepared by Morelli. Respondent's Exhibit (RX) A is the Arrest Report documenting the arrest of the perpetrator on July 22, 2010.]

Official Department Interview of Police Officer Anton Rzhevskiy¹

The tape and transcript of Rzhevskiy's official Department interview, dated July 16, 2010, were entered into evidence as DX 3 and 4, respectively. In the interview, Rzhevskiy

¹ Rzhevskiy was out on sick leave at the time of trial.

stated that on July 7, 2010, he and Gill responded to a radio run that initially came over the air as a 10-54 (aided case) but was subsequently categorized as a 10-24 (past assault).

Upon arriving at the scene, they observed CCPD officers washing the area with buckets of water. These officers advised Gill and Rzhhevskiy that there had been a fight and that the aided had suffered some injury. The CCPD officers also told Gill and Rzhhevskiy that the aided had been uncooperative and removed to the hospital. Gill and Rzhhevskiy requested the response of a supervisor.

Respondent arrived at the location at approximately 1:15 a.m. and instructed Gill and Rzhhevskiy to go to the hospital to learn the identity of the aided and to see what reports needed to be prepared. Respondent did not instruct the officers to secure the scene. There was a knife found at the scene, but it was off to the side by five or ten feet and Rzhhevskiy did not know if it was pertinent to the incident. The knife was in two pieces with the handle and blade separate. It did not have blood on it. Respondent decided that neither the knife nor a hat needed to be vouchered, and Gill and Rzhhevskiy brought these items to the hospital.

At the hospital, Gill and Rzhhevskiy were unable to get information on the aided's identity or condition. Gill spoke with a nurse, and the hat was placed in a bag with the aided's belongings. Gill spoke with Respondent on the phone, and Rzhhevskiy assumed that Gill received instruction from Respondent to mark the job. A final disposition of 10-90Y, report will be made at a later date, was transmitted. Rzhhevskiy threw the knife in the trash outside of the hospital. Although Respondent had told the officers that it was not necessary to voucher the knife, he never instructed them to throw the knife out. Rzhhevskiy did not believe the knife was part of a crime scene.

When asked if at that point he believed that the aided was the victim of an assault, Rzhavskiy stated, "That's the assumption that was going on, but it could have been so many things. It could have been just [an] aided." Although Rzhavskiy believed that an assault had taken place, he never shared this belief with Respondent. Rzhavskiy conceded that he should have prepared an Aided Report, Complaint Report, and Missing/Unidentified Person Report. He neither prepared these reports nor received instruction to do so.

Approximately two hours later, Gill and Rzhavskiy were informed that a CCPD supervisor wanted to speak to them about the incident. Upon returning to Co-op City, Gill and Rzhavskiy were shown a surveillance video. Although the quality of the video was poor, it was possible to see a man getting struck repeatedly. Gill called Respondent and told him about the video. Gill was instructed to inform the CCPD that somebody would follow-up on the matter. Rzhavskiy assumed that the Detective Squad would become involved in the case. Gill and Rzhavskiy did not prepare any paperwork.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent, a 20-year member of the Department, is currently assigned to the 48 Precinct. He has never before been the subject of any disciplinary action. Although he passed the captain's test, the charges currently pending against him prevented him from being promoted. [RX B consists of the five annual performance evaluations that

Respondent has received since his promotion to lieutenant in 2009. On all of the evaluations, he received an overall rating of 4.5 out of 5. On his 2009 evaluation, the rater wrote that Respondent “ensures subordinates are supervised during emergency situations” and also “ensures that prompt notifications are made regarding serious incidents and emergencies.” In 2011, the rater called Respondent “extremely competent in all aspects of his position.” In 2012, the rater noted that Respondent “through a combination of sound judgment and decisiveness . . . consistently performs his duties in a manner emulated by subordinate members of the command.”]

On July 7, 2010, Respondent was assigned as patrol supervisor in the 45 Precinct. He did not respond to the 12:54 a.m. radio run for the aided job in Co-op City because it was not the sort of job that required the response of the patrol supervisor. He went to the location only after Gill and Rzhevskiy notified him that a man had possibly been stabbed. While on his way to the scene, Gill and Rzhevskiy marked the job as 10-55, meaning that it was an aided case that was handled by Emergency Medical Services (EMS) and did not require any further investigation. Respondent informed the officers that this was not an appropriate disposition. He told Gill, “You have to go to the hospital and prepare the Aided Report, get an identification for this male . . . and give me – whether or not this man was, in fact, stabbed.”

Respondent arrived at the scene a little after 1:00 a.m. He testified, “... [A]s a patrol supervisor with 13 years’ experience as a supervisor in the field, I go there and try to assess the situation. I gather the facts of my officers, any witnesses; I look for evidence, the little things that are on my mind, as I focus on this location.” Gill and Rzhevskiy conveyed to him that, according to CCPD officers, the male that was removed to the

hospital was possibly intoxicated, fell and hit his head. At that point, Respondent believed that the man who had been removed to the hospital fell in addition to being stabbed. He then approached CCPD supervisor Person A and asked how he knew the man “wasn’t stabbed or whatever the case may be.” Person A repeated to Respondent what he had already been told by Gill and Rzhevskiy, that the man appeared to be intoxicated, fell, hit his head, received aid from medical personnel, and was removed to the hospital. When Respondent saw a knife handle (without a blade), he asked Person A where it came from. Person A told Respondent that the knife handle and the hat were property belonging to the aided that had fallen out of the aided’s waistband.

Respondent testified that before his arrival at the scene, CCPD officers washed away any blood and evidence. He further testified, “The other thing I started to think was if this man was indeed stabbed through my experience I see EMS always leave traces of like first aid material, such as gauze, something to that nature, band-aids, behind.” Respondent looked for these materials but did not see any at the location. Respondent asked if there were any witnesses and looked around for witnesses himself, but it was after 1:00 a.m. at that point and there was nobody in the area. There was no callback number to see if “somebody actually called it in.” Respondent noted that, as a result, all he had to rely on were Gill and Rzhevskiy and the CCPD officers. Based on what he had in front of him, Respondent reached a determination that “it was just an aided case.” He gave the hat and knife handle to Gill and told her, “This belongs to the aided, go to the hospital, and . . . just to give me a clear head about this whole situation, ascertain the condition of the aided, whether or not he was stabbed, and get an identification on him obviously for an aided –

the preparation of an Aided Report.” Respondent did not establish a crime scene because there was no indication that a crime had occurred.

Respondent then resumed patrol. There were four other sector cars out on patrol during that tour, and Respondent responded to eight calls throughout the night. At one point, Gill called Respondent and told him that hospital personnel confirmed that the aided had not been stabbed. Respondent testified, “So at this point the monkey’s off my back . . . and now I know there’s got to be some merit to the story that Co-op [City] is giving me that the male possibly fell and hit his head.” Respondent instructed Gill to prepare an Aided Report so that the aided’s family could be notified about the situation. When Gill called again minutes later to inform Respondent that the aided did not have any identification, Respondent instructed her to prepare a Missing/Unidentified Person Report and Complaint Report in addition to the Aided Report. Respondent believed that Gill would prepare the necessary paperwork and that the Detective Squad would handle any further investigation. The desk officer, not Respondent, would have been responsible for reviewing Gill’s paperwork. Respondent never told Gill and Rzhevskiy not to voucher the knife or to “get rid of the knife.”

Respondent then received another call from Gill, informing him that the Co-op City incident had possibly been caught on surveillance video. He told her to watch the video and call him back to let him know what was on it. When Gill called back Respondent, she told him that the video was distorted and that it was not possible to see anything other than “some shadow moving around.” The subject of a possible assault did not come up in the conversation.

Respondent testified that he trusted the officers under his supervision to do what they were supposed to do. He trusted that Gill, as an officer with five years of service at the time, would know how to properly handle a routine job, such as an aided case. Respondent did not feel that he failed to supervise Gill and Rzhevskiy that night. He explained:

If the officers on the scene would have prepared the Aided Report and the Missing/Unidentified [Person Report] and the [Complaint Report] that goes with the missing, it would go to the Squad the next day. Whether they had classified that an assault or . . . as a missing, [the Detective Squad] would have gotten involved the following day because it becomes an investigation. . . . The call I made that night was that I classified it as an aided case.

The following week, Morelli informed Respondent that CCPD officers were at the station house to get report numbers for the case. When Respondent called Gill, she told him that no reports were ever prepared. Respondent directed Morelli to prepare the reports, and the Detective Squad started its investigation the following day.

At about 3:00 a.m. on July 7, 2010, Respondent returned to the station house to relieve the desk officer, Sergeant Jacob, for meal. Jacob and Respondent were the only supervisors working in the precinct during that tour. While at the desk, Respondent heard a radio run for a serious crime, perhaps an assault in progress. Respondent did not respond to the scene because he was covering the desk. He realizes now that he should have summoned Jacob back to the desk and then gone to the scene. He noted, however, that he was monitoring the call and received notification from the responding officers that they did not need his assistance.

When Jacob returned to the desk, Respondent went to the locker room to take his meal break. He ended up staying in the locker room for 20 to 30 minutes past his designated one-hour meal time. As he explained to the captain that night, he went to the

locker room because he was having back pain and needed to lie down. He unbuttoned the top button of his shirt and took off his gun belt, setting it on a chair at his side. He was not sleeping and continued to monitor the radio. No radio runs requiring the response of a patrol supervisor came over the air. He conceded that he should have been out on patrol during that period, but he explained that the only reason he did not go out on sick leave that day was because the precinct was so under-staffed.

Respondent admitted that he had incomplete Activity Log entries that day, in that he neglected to write the addresses where he inspected his subordinate officers. This was an oversight on his part.

On cross-examination, Respondent confirmed that he was transferred at the direction of the Police Commissioner from the 45 Precinct to the 48 Precinct because of the charges pending against him. He responded to Co-op City on July 7, 2010 after the job was categorized as a 10-24, possible stabbing. Neither Gill nor CCPD officers ever indicated to Respondent that an assault had taken place. Based on his experience and his assessment of the scene, he determined that the knife was not used to stab anyone, though he did not know at the time if the knife had been used to threaten the victim. He reiterated what Person A told him about the knife falling out of the aided's waistband. He also reiterated that the knife handle and blade were separated. He gave Gill the handle. Gill might have found the blade herself, but he could not remember exactly when the handle and blade were put back together.

Respondent relied that night on the assessment of the CCPD officers. He explained that the CCPD is comprised of retired members of this Department. In addition, CCPD officers receive training at the 45 Precinct for situations such as crime scenes, and they

have peace officer status, which means they are authorized to process arrests. For these reasons, Respondent trusted what they told him.

Respondent did not recall talking with Rzhevskiy that night. He specifically instructed Gill to prepare an Aided Report and Missing/Unidentified Person Report. Although he could have followed up with Gill to ensure that the paperwork was properly prepared, he trusted her to do what she was supposed to do. Respondent explained, "If I knew this man was the victim . . . of a crime, such as a felonious assault or robbery, I would take the extra step and make sure that gets done. When you have an aided case, you know, and you have four other patrol cars out there requiring you to respond to their locations, it's hard to take the time out and follow up on an aided case."

Respondent testified that the purpose of sending Gill and Rzhevskiy to the hospital was to investigate whether or not they were dealing with a stabbing victim or a routine aided case. He explained, "I had to figure out which of the two I had. That's why I sent the officers over to the hospital to confirm whether this male was stabbed, and he was not. He had a head injury which was consistent with what Co-op City was telling me, that he fell – an intoxicated fell and hit his head." Respondent did not make an effort at that point to talk to the victim to find out what happened. He explained, "... [T]he hospital is located in the 49 Precinct. I have a male who I believe is an aided case. I'm not going to leave the precinct unsupervised to go over to a hospital when I have two officers there confirming that for me." Gill told Respondent from the hospital that she tried to talk to the aided but he was unconscious, appeared intoxicated and fell asleep. She also told Respondent that the aided had no identification on him, which is why Respondent instructed her to prepare a Missing/Unidentified Person Report. Although the aided's injuries were consistent with

what Person A told Respondent about the man hitting his head and falling, the doctors must have determined at some point that the man was probably assaulted. This is why CCPD officers came to the 45 Precinct a week later looking for the Complaint Report. At no point did Gill nor Rzhevskiy report to Respondent that a fight could be seen on the surveillance video.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2010-2777

Specification No. 1

Respondent is charged with, on July 7, 2010, failing to supervise members of service in his command by failing to ensure that a proper investigation was conducted, failing to ensure that proper forms were prepared in a timely manner, and failing to make proper notifications.

In the early morning hours of July 7, 2010, Police Officers Jessica Gill and Anton Rzhevskiy from the 45 Precinct responded to a 10-24, code for a "past assault", in the Bronx. Once they arrived at the scene, they learned that EMS had already removed the unidentified male victim to Jacobi Hospital. They learned that there may have been a stabbing. They then requested that Respondent, who was the patrol supervisor, come to the scene. By the time Respondent arrived, the Co-op City police had already cleaned the area.

Respondent found a knife² and a hat lying on the ground near where the unidentified male victim had been found. Respondent directed the officers to bring the knife and hat to the victim at the hospital.

² There was some conflicting testimony about whether a knife handle or a knife was found.

Gill called Respondent from the hospital. Respondent and Gill have different versions about that conversation.

Gill testified that when she called from the hospital, she told Respondent that she could not identify the aided because she could not make direct contact with him. She testified that Respondent told her to mark the job and resume patrol. Then Gill marked the job "90 yellow" (10-90 Y), meaning unnecessary, and Rzhevskiy threw the knife out in a garbage can at Jacobi Hospital.

According to Respondent, Gill called him from the hospital and reported that the hospital personnel said that the aided was not stabbed. Respondent explained, "So at this point the monkey's off my back. I figured, you know, this is it, and now I know there's got to be some merit to the story that Co-op is giving me that the male possibly fell and hit his head."

Respondent testified that he then directed Gill to prepare an aided report to notify the aided's family. Minutes later, Gill called again, saying, "Lieu, the male has no ID, I can't . . . get a notification for him." Respondent testified that he replied, "Officer Gill, prepare the aided report, prepare a missing report and a 61 because . . . in order for you to present a missing report -- a missing case to a squad, you need a 61 which is a complaint report as a John Doe. That's what he is right now."

Respondent claimed that after this conversation with Gill, as far as he knew, the proper Aided Report and Missing/Unidentified Person Report had been prepared, which would notify the Detective Squad to do a follow-up investigation and the desk officer would then sign off on the paperwork.

It is undisputed that at about 3 a.m., both Gill and Rzhevskiy were called back to the original scene to review a surveillance video of the incident that caused the aided to be taken to the hospital. After watching the video, Gill reported to Respondent what they saw. There is a difference between what Gill says she reported to Respondent and what Respondent says she reported to him.

According to Respondent, Gill told him, "Lieu, you can't . . . determine anything on that video; it's distorted, it's grainy." Respondent believed that she also said something like: "You can't really see anything going on there other than there's some shadow moving around." Respondent testified that there was no mention of an assault.

Gill testified that on the video, they saw two males fighting and Gill relayed this to Respondent. According to Gill, Respondent instructed her to tell Co-op City Police that someone would be following up with them later. Then Gill and Rzhevskiy continued the rest of their tour. They never prepared a Complaint Report, Aided Report, or a Missing/Unidentified Person Report.

On July 15, 2010, Co-op City Police came to the 45 Precinct to get the reports for the incident on July 7, 2010. Respondent then discovered that the proper paperwork had not been done and directed Police Officer Michael Morelli to prepare a Missing Unidentified Person Report and a Complaint Report. The paperwork was completed and proper notifications were made to the Detective Squad. When the desk sergeant saw the job had initially been marked as unnecessary and that the paperwork was prepared over a week later, the sergeant called the Command Center. That call started the investigation.

After the Detectives Squad was notified, the aided, who was still unconscious, was identified through fingerprints. The investigation revealed that the aided received a

blunt force trauma to the head when he was being robbed of his cell phone. The perpetrator was arrested and charged with attempted murder. As of the date of this hearing, that charge was still pending in the Bronx Supreme Court.

Gill and Rzhevskiy were both charged with failing to prepare a Complaint Report, an Aided Report, and a Missing/Unidentified Person Report and failing to make proper notifications. Gill was also charged with giving an improper disposition and Rzhevskiy was charged with failing to invoice property. Both officers have since pled guilty and have each forfeited 20 vacation days.

Respondent's attorney argued that Respondent made a reasonable judgment call based on the information he learned when he arrived at the scene of the crime. By then, the scene had already been cleaned up by the Co-op City Police. The Co-op City supervisor told Respondent that the individual who was discovered unconscious had fallen because he was intoxicated and the handle of a knife fell out of the aided's waistband when he fell. Respondent surveyed the scene, could find no witnesses and there was no callback number. However, Respondent was not satisfied with what he had learned and directed the officers to go to the hospital, bring the handle of the knife and hat to the aided, speak to the aided and find out what happened.

Respondent's attorney further argued that later Gill called Respondent from the hospital to report that the aided did not have any identification. Respondent directed Gill to fill out the necessary reports and resume patrol. He himself resumed patrol. On cross-examination, Respondent testified that when Gill telephoned from the hospital, she "just told me that he appeared unconscious and he's sleeping as a result of his drinking and that he had no ID." Respondent did not specifically direct Gill to stay at the hospital until she

was able to make an identification, explaining: "Well, she has to make that assumption up among herself. . . . [T]he officers . . . have to . . . conduct the investigation and get an identification on this aided. That's their job." When asked again if Respondent told the officers to stay at the hospital, Respondent testified, "I told them to get identification on the aided first. Then I told them to prepare the paperwork if they had no ID." When asked again did he ever direct the officers to stay at the hospital until they had identified the aided, Respondent replied, "I told them 'Prepare the paperwork. Stay at the hospital until the paperwork is prepared.'"

Respondent indicated that he needed to be able to trust his officers to do the appropriate job. However, after hearing that the aided could not be identified, Respondent, as patrol supervisor, under *Patrol Guide 216-03, Page 1, Paragraph 7a*, was now required to notify the Missing Persons Squad. Ideally, he should have conducted an immediate preliminary investigation to obtain more information from any neighbors or witnesses at the crime scene, under *Patrol Guide 216-03, Page 1, Paragraph 8a, 8b*. If he believed such an attempt would be fruitless, he was required to make any other reasonable effort to identify the aided or locate friends or relatives of the aided. (*Patrol Guide 216-03, Page 1, Paragraph 8c*)

Identifying the aided was not something he could just rely on his officers to do, but was mandated to do himself. Respondent testified that there was only one other supervisor working that night, the desk officer, and he was the only patrol supervisor over five sector cars in the 45 precinct. If an emergency had prevented him from conducting his own investigation, he should have ordered the officers to conduct an investigation and then followed up with them to ensure that they had done this. Finally, it was his own

responsibility, as a patrol supervisor, under this section of the Patrol Guide, to notify the desk officer and Missing Persons squad of the results of his preliminary investigation.

(Patrol Guide 216-03, Page 1, Paragraph 9) Again, if he was too busy that night, he should have directed his officers to do that and then followed up to ensure it was done.

Respondent claimed that it was not his responsibility to follow up with the officers after he directed them to prepare the proper paperwork, but it was the desk officer's responsibility. This is incorrect. The Patrol Guide required him to personally prepare the paperwork. Although not cited by the Department, this particular regulation clarifies that Respondent should have, at minimum, followed up with his officers to ensure that the proper procedure was followed that night.³

The testimonies from Gill and Rzhevskiy also demonstrated that they were not familiar with the procedures they were supposed to follow and that they needed further direction from Respondent. Respondent spoke with them three times that evening and should have been able to ascertain that they did not understand what they needed to do as police officers.

Therefore, Respondent is found Guilty of Specification No. 1.

³ The Rules of the City of New York governing the Deputy Commissioner of Trials state, "The Deputy Commissioner of Trials may take official notice of any fact which may be judicially noticed by the courts of New York State." This notice may be taken after submission of a case "sua sponte." 38 RCNY § 15-04(f). Thus the Court may take judicial notice of the New York City Police Department Patrol Guide. The Patrol Guide is a document with which all police officers, particularly supervisory officers, are expected to be familiar.

Disciplinary Case No. 2011-4550

Respondent has pled guilty to the four Charges and Specifications in this case. These charges arose out of other incidents that occurred later on July 7, 2010, which is the same night as the case previously discussed. These charges allege that Respondent failed to remain alert, (Specification No. 1), failed to supervise members of the service assigned to his platoon, (Specification No. 2), failed to respond to a serious crime in progress as required, (Specification No. 3), and failed to make entries in his Activity Log as required, (Specification No. 4).

In his effort to address these charges Respondent stated that there were only two supervisors, himself and a desk officer, Sergeant Jacob, working that night. Thus he said he did not respond to a serious crime, which he believed might have been an assault in progress, because he was covering the desk for Jacob, who was on meal. Respondent acknowledged that he should have summoned Jacob back to the desk and that he should have responded to the scene.

Respondent also acknowledged that when Jacob returned to the desk, he went to locker room for a meal break. Respondent acknowledged that he unbuttoned the top button of his shirt, took off his gun belt and lay down, but denied falling asleep. Respondent admitted that he remained in the locker room 20 to 30 minutes beyond a one hour meal break. Respondent claimed that he did this because of back pain and that the only reason he did not call in sick was because the precinct was understaffed.

Respondent also admitted failing to make proper entries in his Activity Log.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on August 30, 1993. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department Advocate has recommended a forfeiture of 30 vacation days and 10 suspension days.

Respondent's conduct demonstrated a lack of judgment and a failure of supervision. As a consequence of Respondent's conduct, a serious crime went uninvestigated for a week. No police action was taken to identify the victim of that crime because Respondent failed to give the victim the supervisory attention and priority mandated by the Patrol Guide. A substantial penalty is warranted.

Therefore, it is recommended that Respondent forfeit 30 vacation days and 10 suspension days.

APPROVED
NOV 26 2013

RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,



Amy J. Porter

Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER LUIS CRESPO
TAX REGISTRY NO. 903709
DISCIPLINARY CASE NOS. 2010-2777 & 2011-4550

Respondent received an overall rating of 4.5 "Highly/Extremely Competent" on his annual performance evaluations in 2012, 2011 and 2010. [REDACTED]

[REDACTED] He was awarded one medal for Excellent Police Duty and one medal for Meritorious Police Duty. Respondent has no prior disciplinary record.

For your consideration.



Amy J. Porter
Assistant Deputy Commissioner - Trials